

# **Notice of Allowability**

Application No.

09/846,782

Examiner

Cheryl Juska

Applicant(s)

HUTCHISON, ROBERT D.

Art Unit

1771

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Response filed October 24, 2003.
2. ☒ The allowed claim(s) is/are 1-38.
3. ☒ The drawings filed on 02 May 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_

5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
    - (a) ☐ The translation of the foreign language provisional application has been received.
  6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE**
7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_
    - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
    - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF AND/OR INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## **Attachment(s)**

- |   |  |
|---|--|
| <ol style="list-style-type: none"> <li>1 <input type="checkbox"/> Notice of References Cited (PTO-892)</li> <li>2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> <li>3 <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No. _____</li> <li>4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material</li> </ol> | <ol style="list-style-type: none"> <li>5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</li> <li>6 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____</li> <li>7 <input checked="" type="checkbox"/> Examiner's Amendment/Comment</li> <li>8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance</li> <li>9 <input type="checkbox"/> Other</li> </ol> |
|---|--|

Cheryl Juska  
Primary Examiner  
Art Unit 1771

### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Richard Besha on January 6, 2004.

The application has been amended as follows:

In claim 28, please delete "1" and insert therein -21—.

### *Reasons for Allowance*

2. The Response filed October 24, 2003 has been fully considered and has been found persuasive. Specifically, applicant's arguments and evidentiary declarations of Shail and Duff assert that the cited prior art of Roth (US 4,563,378) does not teach the presently claimed non-tufted sections forming a discrete wear surface portion of the floor covering. Additionally, there is not proper motivation to modify Roth so as to produce said non-tufted sections since Roth teaches a continuous tufted surface. Therefore, the prior art rejections set forth in the last Office Action, sections 4-13, are hereby withdrawn. An updated search has produced no new art of record. Hence, claims 1-38 are allowed.
3. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

backing. Foster fails to teach or suggest the presently claimed non-tufted portions of the wear surface.

b. US 6,627,290 B2 issued to Wittlinger et al. teaches a floor covering having backstitches as a wear surface. Figures 5-7 show a wear surface having tufted and non-tufted portions. However, the effective file date of Wittlinger is December 31, 2001, which is later than the present effective file date of May 2, 2001. Hence, Wittlinger is not available as a prior art reference.

4. Claims 1-38 are allowed
5. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."
6. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0994.

cj  
January 10, 2004

  
CHERYL A. JUSKA  
PRIMARY EXAMINER